

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

CLYDE RAY SPENCER, MATTHEW RAY
SPENCER, and KATHERINE E. TETZ,

Plaintiffs,

v.

FORMER DEPUTY PROSECUTING
ATTORNEY FOR CLARK COUNTY
JAMES M. PETERS, DETECTIVE SHARON
KRAUSE, SERGEANT MICHAEL
DAVIDSON, CLARK COUNTY
PROSECUTOR'S OFFICE, CLARK
COUNTY SHERIFF'S OFFICE, THE
COUNTY OF CLARK, and JOHN DOES
ONE THOROUGH TEN,

Defendants.

No. 3:11-cv-05424-BHS

AFFIDAVIT OF KATHLEEN T.
ZELLNER IN SUPPORT OF
MOTION FOR RELIEF
PURSUANT TO FED. R.
CIV. 56(d)

The undersigned duly sworn and upon her oath, deposes and states as follows:

1. My name is Kathleen T. Zellner, and I am lead counsel representing the
Plaintiffs in the above-captioned matter.

2. I submit this affidavit in support of Plaintiff's Motion Pursuant to Federal Rule
of Civil Procedure 56(d).

3. Attached to this affidavit as Exhibit I is a true and correct copy of an excerpt
from Defendant Peters' deposition from the habeas proceedings, Case No. C94-5238 RJB, as
disclosed to Plaintiffs' counsel in Defendants' initial disclosures.

AFFIDAVIT OF KATHLEEN T. ZELLNER
(3:11-cv-05424-BHS) – 1
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Seattle, WA 98101-3045
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1 4. Attached to this affidavit as Exhibit 2 is a true and correct copy of an excerpt
2 from Defendant Peters' testimony from the habeas proceedings, Case No. C94-5238 RJB, as
3 disclosed to Plaintiffs' counsel in Defendants' initial disclosures.

4 5. Attached to this affidavit as Exhibit 3 is a true and correct copy of the report of
5 medical examination of Kathryn Spencer performed by Dr. Magee, as disclosed to Plaintiffs'
6 counsel in Defendants' initial disclosures.

7 6. Attached to this affidavit as Exhibit 4 is a true and correct copy of an excerpt
8 from Defendant Krause's testimony from the habeas proceedings, Case No. C94-5238 RJB, as
9 disclosed to Plaintiffs' counsel in Defendants' initial disclosures.

10 7. Attached to this affidavit as Exhibit 5 is a true and correct copy of the report of
11 medical examination of Matthew Hanson performed by Dr. Galaviz, as disclosed to Plaintiffs'
12 counsel in Defendants' initial disclosures.

13 8. Plaintiffs' counsel has a reasonable and good faith belief that the requested
14 discovery, including the depositions of all named Defendants, is necessary to address the
15 complex legal and factual matters raised in Defendant Peters' motion for summary judgment.

16 9. Based upon a review of the documents disclosed to-date, a reasonable and good
17 faith belief exists that the following facts will be obtained if Plaintiffs' counsel is allowed to
18 proceed with the requested discovery, including the depositions of all the Defendants:

19 a. Defendant Peters was involved in the investigation of Mr. Spencer by,
20 among other things, questioning Kathryn Spencer when no charges were pending against
21 Mr. Spencer and, in fact, the prosecutor's office had declined to press charges.

22 b. Defendant Peters coerced and manipulated Kathryn Spencer into making
23 false statements against Mr. Spencer.

24 c. Defendant Peters concealed the exculpatory videotape of his interview
25 with Kathryn Spencer by, among other things, removing it from the prosecutor's file.
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1 d. Defendant Peters concealed exculpatory notes of his interview with
2 Kathryn Spencer by, among other things, removing them from the prosecutor's file.

3 e. Defendant Peters concealed the fact that he had coerced and manipulated
4 Kathryn Spencer into making false statements against Mr. Spencer.

5 f. Defendant Peters knew about the exculpatory medical examinations
6 performed on Kathryn Spencer and Matthew Hanson prior to Mr. Spencer's *Alford* plea.

7 g. Defendant Peters concealed the exculpatory medical examinations by,
8 among other things, removing them from the prosecutor's file.

9 h. Defendant Peters conspired with the other named Defendants to withhold
10 exculpatory evidence and continue the prosecution against Mr. Spencer up until the date the
11 charges were dropped against Mr. Spencer.

12 i. Defendant Peters knew that Defendants Krause and Davidson engaged in
13 coercive and manipulative interview tactics with Matthew Hanson, Matthew Spencer and
14 Kathryn Spencer.

15 j. Defendant NWT'S met with Defendants Krause and Davidson on
16 multiple occasions to discuss coercive interview techniques and the most effective ways of
17 procuring incriminating statements from the children.

18 k. Defendant Peters knew that Defendants Davidson and Shirley Spencer
19 were engaged in a romantic, sexual relationship during the investigation of Mr. Spencer, and
20 failed to disclose the relationship to Mr. Spencer.

21 l. Defendant Peters personally attested to facts he knew to be false in the
22 motion and affidavit for Mr. Spencer's second arrest warrant. Defendant Peters likewise
23 omitted the exculpatory evidence to mislead the magistrate issuing the arrest warrant.

24 m. Defendant Peters knew that apart from the coerced, false statements
25 attributed to Matthew Spencer, Matthew Hanson and Kathryn Spencer there was no evidence of
26 any sexual abuse by Mr. Spencer.

1 n. In the above-described manner, Defendant Peters alone and in concert
2 with the other named Defendants fabricated evidence and concealed exculpatory evidence as a
3 means of fabricating probable cause to arrest and prosecute Mr. Spencer.

4 o. In the above-described manner, Defendant Peters alone and in concert
5 with the other Defendants mislead the prosecuting attorney into filing charges against
6 Mr. Spencer.

7 p. Defendant Peters continued the conspiracy by, among other things, lying
8 under oath as to his interview of Kathryn Spencer in December of 1984, and lying as to his
9 knowledge of the medical examinations of Kathryn Spencer and Matthew Hanson in the habeas
10 proceedings.

11 10. Plaintiffs' counsel has a reasonable and good faith belief that the above-
12 described facts will defeat Defendant Peters' motion for summary judgment.

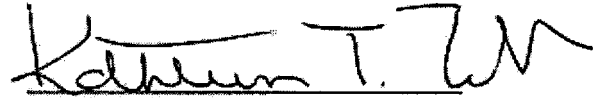
13 11. Plaintiffs' counsel has been diligent in reviewing discovery, which includes
14 thousands of pages of documents spanning close to 30 years of investigation and court
15 proceedings. Plaintiffs' counsel continues to try and locate witnesses to interview them.
16 Simultaneous with the filing of this motion, Plaintiffs' counsel is issuing written interrogatories
17 to the Defendants in anticipation of taking their depositions.

18 12. Plaintiffs seek to depose the Defendants not for purposes of delay, but because
19 the requested discovery is essential to properly responding to Defendant Peters' motion for
20 summary judgment.

21 Further Affiant Sayeth naught.
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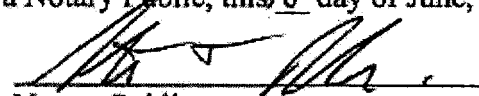
1 I declare under penalty of perjury that the foregoing is true and correct.

2 Executed this 18th day of June, 2012, in Downers Grove, Illinois.

3
4 
5 Kathleen T. Zellner

6 State of Illinois)
7) SS.
8 County of DuPage)

9 Subscribed and sworn to before me, a Notary Public, this 18th day of June, 2012.

10 
11 Notary Public

12 My commission Expires:

